IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1620 OF 2005
IN
SUIT (LODGING) NO.1502 OF 2005

Miss Meenal G. Karkera Plaintiff

versus

Shridhar D. Raman and another Defendants

Mr.Bharat Zaveri for plaintiff.

Mr.S.V.Rajeshwar for defendants 1 and 2.

Mr.Asmat Hippargi for defendant no.3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 26th July 2005

PC :

1. Heard Mr.Zaveri appearing for plaintiff, Mr.Rajeshwar appearing for defendants 1 and 2 and Mr.Hippargi for defendant no.3.

2. This Court in the present Notice of Motion on 12th May 2005 recorded statement of Mr.Rajeshwar appearing for defendants 1 and 2 that the flat in question is agreed to be sold to defendant no.3 and that possession is also handed over. However, subsequently it is brought to my notice that the possession was not handed over and

therefore, I had passed further ad-interim orders on this Notice of Motion on 16th June 2005. The order that was passed by me directed defendants 1 and 2 to maintain status-quo inasmuch as physical possession of the flat was not to be handed over to the third defendant purchaser in pursuance of an agreement dated 7th May 2005.

3. Considering the fact that a statement was made that an agreement for sale in respect of the very flat which was agreed to be sold to the plaintiff has been entered into, Mr.Zaveri sought time for taking out appropriate proceedings to amend the plaint and the ad-interim order, therefore, was continued till today.

4. The Chamber Summons has already been granted. Purchaser has now been impleaded as defendant no.3. Affidavits have been filed. Matter appears before me for continuation of ad-interim orders granted earlier.

5. Mr.Zaveri appearing in support contends that this is a typical case where the plaintiff and the defendants entered into a Deed of Transfer (Exhibit-C) and the total consideration therein is Rs.9,95,000/-. Although, clause 3 of the said

document provides that the amount of Rs.9,45,000/-, which is the balance sum/consideration, has to be paid before 10th March 2005, Mr.Zaveri submits that the plaintiff immediately upon execution of the Deed of Transfer, addressed a letter dated 23rd February 2005 to the defendants in which it is categorically stated that plaintiff and defendants 1 and 2 are known to each other for the past five years. Defendants 1 and 2 have a flat (suit property) adjacent to the flat of plaintiff's brother. In first week of January 2005 defendants 1 and 2 showed their willingness to sell the flat (suit property) for a consideration of Rs.9.95 lakh. Rs.50,000/- was paid by way of earnest money and the balance was to be paid within three months from the date of receipt of earnest money by raising loans from financial institutions subject of course to no objection of the co-operative housing society. It is not in dispute that Rs.50,000/- have been paid. However, according to Mr.Zaveri, the defendants while disputing execution of transfer deed, do not dispute that an application was made to the society for obtaining no objection. In the letter dated 23rd February 2005 the plaintiff brought to the notice of the defendants that the

formalities including necessary no objection certificate from the society have not been completed. The plaintiff also stated that she is hopeful of getting loan facilities and arranging the payment of balance monies. However, by this letter, plaintiff called upon defendants 1 and 2 to hand over documents including no objection certificate of the society.

6. Mr.Zaveri brings to my notice letter addressed in reply to the plaintiff's letter dated 23rd February 2005, in which the defendants' advocates states as under :-

"My client says that whatever you have stated in para 1 to 5 are false and not true to the knowledge of my client.

My client has returned back the amount of Rs.50,000/- by chq. No.010759 dt.25.05.2005 drawn on Union Bank of India - Mumbai to your client by Regd. A.D. and not interested to sell the flat and the M.O.U. stands cancelled."

7. Mr.Zaveri submits that immediately upon receiving the letter, the plaintiff addressed a letter dated 12th March 2005 and pointed out that there is no question of cancelling the Memorandum of Undertaking (MOU) inasmuch as at no stage it was intended by the plaintiff that the balance consideration would not be paid by her. On the

other hand, the plaintiff accused defendants 1 and 2 for the delay in obtaining no objection certificate. Thereafter, an advocate’s notice was addressed on 16th March 2005 and after recording the aforesaid facts it was contended that the defendants 1 and 2 never communicated anything about no objection certificate from the society. It is rather surprising that the defendants 1 and 2 who are also part of the managing committee of the society convened a meeting of the managing committee and changed earlier decision of giving no objection certificate. At that stage also, plaintiff pointed out that she is willing to pay the balance consideration with interest, if any, for the delayed payment. Mr.Zaveri states that reply to this letter of plaintiffs advocate by the defendants is eloquent enough inasmuch as defendants 1 and 2 called upon the plaintiff to pay a total consideration of Rs.10.25 lakh. According to the defendants themselves this was the understanding inasmuch as earlier consideration of Rs.9.95 lakh is increased to Rs.10.25 lakh on account of delay in making payment by the plaintiff. This aspect is clear in letter of 23rd March 2005 in which the following is recorded :-

"... Our clients say that it was clear understanding between both the parties that after expiry of 10 days, if your client fails to pay the agreed consideration, your client shall pay increase sale price of Rs.10,25,000/- (Rupees Ten Lacs Twenty Five Thousand only).

... ...

our clients have doubt about the bonafide intention of your client who has not paid the entire balance consideration with interest upto date. As regards the interest part of the delayed payment, the same shall be decided only, if your client pay the balance consideration with interest within one week from 21/3/2005."

The correspondence thus went on and at no stage the plaintiff either refused to comply with the conditions of MOU nor was the MOU treated as cancelled. He invites my attention to the letter addressed to the society by the plaintiffs advocate. He submits that the plaintiff is still ready and willing to pay the entire amount and, therefore, ad-interim order be confirmed.

8. Mr.Rajeshwar appearing for defendants 1 and 2 contends that the entire version of plaintiff is false. He submits that there is no deed of transfer. He submits that the plaintiff was not and even today interested in purchasing the flat in question. He states that enough time was given to the plaintiff and yet the amount of

Rs.10.25 lakh has not been paid. He submits that the MOU is cancelled and after having waited for a considerable length of time ultimately, the defendants 1 and 2 have agreed to sell the flat to defendant no.3. She has paid a sum of Rs.50,000/-. She is arranging for the balance amount and infact she is also ready and willing to pay the balance amount under the agreement but could not do so in view of the order passed by this Court. He submits that time was made essence of the contract. In any event, after the communication of 23rd February 2005, the amount having not been paid within 10 days the MOU is now terminated and the plaintiff cannot restrain defendants 1 and 2 from dealing with, disposing off or transferring the suit flat.

9. Mr.Rajeshwar's contentions are adopted by defendant no.3 and additionally she has invited my attention to an affidavit filed on 18th July 2005.

10. In my view, considering the averments in the plaint and after perusing the annexures thereto, it is clear that defendants 1 and 2 are interested in disposing off the suit flat. On their own showing, even if there was no deed of

transfer, they have termed the arrangement/deal between themselves and plaintiff as a MOU on the basis of which the flat was agreed to be sold. One of the condition is that it would be sold subject to No-objection certificate from the co-operative housing society. It is also clear that initial amount of Rs.9.96 lakh stood increased to Rs.10.25 lakh on account of delay in payment by the plaintiff. However, from the tenor of the correspondence, it does not appear that the defendants 1 and 2 have terminated the MOU.. On the other hand, repeated extensions have been given. Plaintiff has also annexed copies of letters addressed to the co-operative housing society. Prima facie, from perusal of this material, it appears that the issue of no objection certificate is not concluded. This, despite defendants 1 and 2 stating that the society has decided not to grant their no objection to the transaction/deal between plaintiff and defendants 1 and 2. Today the position is that both, plaintiff as well as defendant no.3 have paid only Rs.50,000/-. Although, defendants 1 and 2 have forwarded their cheque of Rs.50,000/- to the plaintiff, the same is not encashed till date. In my view, therefore, interest of justice would be served,

if ad-interim order passed on 16th May 2005 is continued for a period of eight weeks from today on the condition that within this period the plaintiff deposits in this Court a sum of Rs.9.00 lakh (Rs.Nine lakh only). On the failure of the plaintiff to deposit this sum, ad-interim order would stand vacated after a period of eight weeks and it would be open for defendants 1 and 2 to take all steps including deposit of a sum of Rs.50,000/- in Court. This order is passed without prejudice to rights and contentions of both sides. Mr.Zaveri has filed further affidavits stating that possession of the flat is not handed over to the third defendant. Relying upon them, I have passed this order. The fact that possession is not handed over to the third defendant is also confirmed by the affidavits of defendants 1 and 2 as well as defendant no.3. For all these reasons, in my view, if ad-interim order is continued with the aforesaid condition, no prejudice will be caused to the parties.

11. Needless to state that after a period of eight weeks if the amount is deposited, it will be open for the plaintiff to seek appropriate reliefs in the Notice of Motion. However, if the amount is not so deposited, ad-interim order will

stand vacated without further reference to this Court and the Notice of Motion would stand dismissed.

(S.C.DHARMADHIKARI, J.)